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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN FRANCISCO MALDONADO,

Defendant and Appellant.

C043374

(Super. Ct. Nos.
02F00264, 02F00426)

Defendant Juan Francisco Maldonado appeals various aspects of the sentence imposed following his pleas of no contest in two separate cases. He contends he received an unauthorized sentence because the firearm use enhancement was run consecutively to his life sentence but the underlying felony was run concurrently to that sentence; although there were two separate cases, because they were resolved by way of a single plea agreement, only one restitution fine was authorized; since the court failed to orally impose the amount of booking and classification fees, they were erroneously imposed; that there

are errors in the abstract of judgment; and he is entitled to an extra day of credit for time served. As to the first contention, we find defendant is estopped from raising this claim, as it was the specific sentence he agreed to as part of the plea. As to each of the remaining contentions, we agree with defendant.

RELEVANT FACTS AND PROCEDURAL HISTORY¹

In case No. 02F00264, defendant was charged with kidnapping to commit robbery and/or sexual assault (Pen. Code, § 209, subd. (b)(1)),² five counts of forcible oral copulation (§ 288a, subd. (d)), four counts of first degree robbery (§ 211), residential burglary (§ 459), three counts of assault with a firearm (§ 245, subd. (a)(2)), two counts of false imprisonment (§ 236), and kidnapping to commit robbery (§ 209, subd. (b)(1)). In addition to the substantive charges, and other than the residential burglary count, each of the counts also alleged a firearm enhancement under either section 12022.53, subdivision (b) or section 12022.5, subdivisions (a) and (d). Also, each of the five oral copulation counts also alleged that defendant had kidnapped the victim within the meaning of section 667.61, subdivision (d)(2), and had personally used a firearm within the meaning of section 667.61, subdivision (e)(4).

¹ The substantive facts underlying defendant's convictions are irrelevant to this appeal and are therefore not recounted.

² Undesignated statutory references are to the Penal Code.

In case No. 02F00426, defendant was charged with first degree robbery (§ 211), kidnapping to commit robbery (§ 209, subd. (b)(1)), and second degree robbery (§ 211). As to each of these charges it was further alleged defendant had personally used a handgun (§ 12022.53, subd. (b)).

Pursuant to a comprehensive plea agreement, defendant pleaded no contest to kidnapping (§ 209, subd. (b)(1) -- count two) with an admission that he personally used a handgun (§ 12022.53, subd. (b)) in case No. 02F00426, and forcible oral copulation (§ 288a, subdivision (d) -- count two) with admissions that he kidnapped the victim for purposes of the oral copulation (§ 667.61, subd. (d)(2)) and that he personally used a handgun (§ 667.61, subd. (e)(4)) in case No. 02F00264. The plea further contemplated the remaining counts would be dismissed with *Harvey*³ waivers.

In case No. 02F00426, as defense counsel explained it, defendant agreed that "[w]ith respect to the case ending 426, he will receive a ten-year enhancement, and that's a determinate sentence. And in addition to that, there is a [seven]-year-to-life sentence. [¶] With respect to the case ending 264, Count [two], the plea that he's entering carries 25 [years] to life. [¶] And the way it works essentially is that that 25 [years] to life is concurrent with the [seven years] to life. That doesn't start running until he has actually done his time on the first

³ *People v. Harvey* (1979) 25 Cal.3d 754.

ten-year determinate sentence. So it's essentially 35 [years] to life." The court explained to defendant "this is a stipulated term, because other charges will be dismissed in the meantime. And [the] stipulated part means that you, your attorney, the Deputy DA, and the court agree[] to the terms, and you won't be considered for any lesser term or any higher term as described."

At the sentencing hearing, defense counsel again explained the terms of the stipulated sentence, "In case ending 264, he is receiving life. That's [seven] years to life, plus a ten-year enhancement. And then in case ending 426, he is receiving 25 years to life, and it says consecutive. [¶] And the deal is that the two life terms actually run concurrent, but they both run consecutive to the ten-year deal. [¶] So he does the 10 years, and then he does 25 years, and then he is eligible for parole. So it would be 35 years less credits, and then at that time he is eligible for probation."

Defendant was then sentenced in accordance with the plea bargain in case No. 02F00264 to 25 years to life and in case No. 02F00426 to life with a possibility of parole. In addition, in case No. 02F00426 a 10-year determinate sentence was imposed for the firearm enhancement under section 12022.53, subdivision (b). The life sentences were run concurrently with each other and the 10-year sentence was run consecutively to the life terms, for an aggregate sentence of 35 years to life in state prison.

In addition, the trial court imposed various fines and fees, including main jail booking and classification fees in case No. 02F00426. In each case, the court's oral pronouncement imposed a separate \$10,000 restitution fine under sections 1202.4 and 1202.45 (suspended unless parole revoked).⁴

DISCUSSION

I.

Defendant contends because an enhancement cannot be separated from its underlying felony, the trial court imposed an unauthorized sentence when it sentenced him to 25 years to life in case No. 02F00264, ran the life sentence in case No. 02F00426 concurrently, but ran the 10-year firearm enhancement in case No. 02F00426 consecutively.

We agree with the People that defendant is estopped from challenging his sentence. Here, it is clear defendant received precisely the sentence he agreed to. That the 10-year firearm enhancement would be imposed separately from its underlying felony was repeatedly and specifically spelled out in the record. "Where the defendants have pleaded guilty in return for a *specified* sentence, appellate courts will not find error even though the trial court acted in excess of jurisdiction in reaching that figure, so long as the trial court did not lack *fundamental* jurisdiction. The rationale behind this policy is

⁴ The \$10,000 sections 1202.4 and 1202.45 fines imposed in case No. 02F00264 are not reflected on the May 14, 2003 amended abstract of judgment.

that defendants who have received the benefit of their bargain should not be allowed to trifle with the courts by attempting to better the bargain through the appellate process." (*People v. Hester* (2000) 22 Cal.4th 290, 295 (*Hester*).)

Defendant attempts to avoid this bar, by claiming the plea agreement was in excess of the court's fundamental jurisdiction. It was not.

"Lack of jurisdiction in its most fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties." (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 288.) This case does not involve such fundamental matters.

Rather, this case is like those in which, "though the court has jurisdiction over the subject matter and the parties in the fundamental sense, it has no 'jurisdiction' (or power) to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites." (*Abelleira v. District Court of Appeal, supra*, 17 Cal.2d at p. 288; see also *People v. Jones* (1989) 210 Cal.App.3d 124, 135.)

Because the trial court possessed fundamental jurisdiction, the principle announced in *Hester, supra*, 22 Cal.4th 290, applies here to prevent defendant from challenging the sentence to which he agreed as a term of the plea bargain, the benefit of which he has received.

II.

Defendant next contends that, "because the two cases were resolved by a comprehensive plea agreement, only one restitution fine was authorized." (See fn. 4, *ante*.) The People properly concede this point. Where charges are joined in a single accusatory pleading, or where charges in separate pleadings are consolidated so that the defendant is tried and sentenced in a single proceeding, it is error for the court to impose multiple restitution fines. (*People v. Ferris* (2000) 82 Cal.App.4th 1272, 1277-1278; *People v. McNeely* (1994) 28 Cal.App.4th 739, 743-744.) Accordingly, the duplicative restitution fine and parole revocation fine must be stricken.

III.

Defendant also contends the trial court erred in imposing booking and classification fees, because "the court's oral pronouncement of judgment failed to state the amount of booking and classification fees imposed." The People respond that this issue has been waived, relying on our decision in *People v. Hodges* (1999) 70 Cal.App.4th 1348, 1357. However, *Hodges* does not address the situation presented here.

In this case, the trial court did not actually impose the fees in its oral pronouncement of judgment. The court stated, "Main jail booking and classification fees. That's pursuant to 12 -- strike that. Those are through the court's installment process. And those all relate to 02F00264." When pronouncing the sentence in case No. 02F00264, the court stated that it was

ordering main jail booking and classification fees but it did not state the amount of these fees. We cannot say that defendant was required to object to the imposition of fees which were not actually imposed in the court's oral pronouncement of judgment and did not appear until the clerk's rendering of the abstract of judgment.

Where there is a discrepancy between the oral pronouncement rendering judgment and the minute order or the abstract of judgment, the oral pronouncement controls. (*People v. Mesa* (1975) 14 Cal.3d 466, 471.) The pronouncement of judgment is a judicial function, while the entry into the minutes and the abstract of judgment is a clerical function; therefore, any inconsistency is presumed to be a clerical error. (*Ibid.*) Under our inherent authority to correct such clerical errors (*People v. Rowland* (1988) 206 Cal.App.3d 119, 123; *People v. Anthony* (1986) 185 Cal.App.3d 1114, 1125-1126), we order that the abstract of judgment be corrected to reduce the main jail booking fee and classification fees (listed on the May 14, 2003 amended abstract for both cases) to zero.

IV.

Defendant also points out several errors in the abstract of judgment that must be corrected. The People again correctly concede these points. Specifically, the May 14, 2003 amended abstract incorrectly states the conviction for case No. 02F00426 was for a violation of section 290, subdivision (B)(1). In fact, defendant was convicted of a violation of section 209,

subdivision (b)(1). In addition, the abstract indicates that the life sentence imposed in case No. 02F00426 was ordered to run consecutively with the 25-year-to-life sentence imposed in case No. 02F00264. As detailed above, these sentences were ordered to run concurrently. Finally, the two "one-strike" allegations under section 667.61, subdivisions (d)(2) and (e)(4) are incorrectly listed under item 3 as "ENHANCEMENTS." Instead, the abstract should have the appropriate box checked under item 8 indicating that defendant was sentenced in accordance with section 667.61.

V.

Defendant's final contention is that he is entitled to an additional day of credit for time served. Again, the People properly concede this point and we accept the concession. Accordingly, the abstract of judgment should be amended to award defendant 344 actual days of credit in each case, rather than 343.

DISPOSITION

The judgment is modified as follows: The imposition of the second \$10,000 restitution fine and the \$10,000 parole revocation fine is stricken;⁵ the main jail booking fee and

⁵ We note that the amended abstract of judgment does not require correction on this point. Although the oral pronouncement of judgment indicated two \$10,000 fines, the amended abstract of judgment reflects only one such fine attached to case No. 02F00426.

classification fees are stricken in each case; the conviction in case No. 02F00426 is to be corrected from "section 290, subdivision (B)(1)" to "section 209, subdivision (b)(1)"; the life sentence imposed in case No. 02F00426 is to be corrected to show it was ordered to run concurrently with the 25-year-to-life sentence imposed in case No. 02F00264; the "ENHANCEMENT" references in item 3 of the amended abstract shall be removed and under item 8 of the abstract it shall reflect that defendant was sentenced pursuant to section 667.61; and, defendant shall be granted an additional day of actual credit for time served from 343 to 344, and the total credits changed from 394 to 395 respectively, in each case. As so modified, the judgment is affirmed. The trial court is directed to prepare a second amended abstract of judgment reflecting these modifications and to forward a certified copy of the second amended abstract to the Department of Corrections.

_____, BUTZ, J.

We concur:

_____, RAYE, Acting P. J.

_____, ROBIE, J.